



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

COPY MAILED

AUG 03 2007

OFFICE OF PETITIONS

Applicant: Peter Gingras
Appl. No.: 10/525,193
International Filing Date: August 25, 2003
Title: Three Dimensional Implant
Attorney Docket No.: 14118-003US1
Pub. No.: US 2006/0106419 A1
Pub. Date: May 18, 2006

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on July 20, 2006, for the above-identified application.

The request is DISMISSED.

Applicant requests that the application be republished because the patent application publication contains a material error whereby text is missing from Figure 9D.

37 CFR 1.221 (b) is applicable “only **when the Office makes a material mistake which is apparent from Office records**.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable.” A material mistake must affect the public’s ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹

The missing text in the publication is not an error of the Office. The missing text in Figure 9D was not submitted in the original patent application as filed. Text that is not in the original application cannot be added in the publication. It should be noted that the missing text is also not in the application file. New matter cannot be added to the file by requesting a re-publication.

Applicant is reminded of his duty to conduct a reasonable inquiry before filing a paper before the Office. See MPEP 410.

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239, Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

Applicants' request for a corrected patent application publication on July 20, 2006, may constitute a "failure to engage in reasonable efforts to conclude processing or examination of the application." See 1.704(c). This determination will be made on or after a mailing of a Notice of Allowance.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221 (a). Such a request for republication "must include a copy of the application compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18 (d) and the processing fee set forth in § 1.17 (i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18 (d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system and questions or request for reconsideration of the decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
Commissioner for Patents
P.O. Box 1450
Alexandria, Va. 22313-1450

By facsimile: 571-273-8300

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709 (voice).



Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy